

PATENT
Attorney Docket No: 27866/32960

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:) For: Chitinase Materials and Methods
)
Patrick W. Gray)
) Group Art Unit: 1652
Serial No. 08/663,618)
)
Filed: June 14, 1996) Examiner: R. Prouty

**DECLARATION OF PATRICK W. GRAY
UNDER 37 C.F.R. §1.608(b) IN SUPPORT OF REQUEST
FOR INTERFERENCE WITH U.S. PATENT NO. 5,928,928**

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

I, Patrick W. Gray, declare that:

1. I am a citizen of the United States currently residing at 1600 40th Avenue, Seattle, Washington 98122, U.S.A.

2. I submit this Declaration for the purpose of relating facts known to me concerning the identification, isolation and sequencing of portions of DNA encoding human chitinase, which is described in the above-identified application. The activities described herein took place at ICOS Corporation, Bothell, Washington, U.S.A., during the period prior to June 7, 1995.

3. I am the inventor of the subject matter claimed in the above-identified patent application. During the period prior to June 7, 1995, I was a Senior Director of Science at ICOS Corporation. I am presently Vice President of Science at ICOS Corporation.

4. Heather Brammer (formerly Heather Pearson) was an intern at ICOS Corporation during the period prior to June 7, 1995, and performed laboratory work at my direction and under my supervision. The accompanying Declaration of Heather Brammer Under 37 C.F.R. §1.608(b) presents evidence showing that, prior to the June 7, 1995 filing date of U.S. Patent No. 5,928,928, the cDNA insert of plasmid MO-911 had been partially sequenced and characterized as a chitinase by comparison with other known sequences in nucleotide and peptide sequence databases.

5. An alignment of the "mc17705" DNA sequence of clone MO911 with the human chitinase DNA sequence set forth in SEQ ID NO: 3 in U.S. Patent No. 5,928,928 (the "928 patent") is attached hereto as Exhibit 1. In Exhibit 1, the first line labeled "Copy of MO911" is the DNA sequence of clone MO911, the second line labeled "PATENT928 FIG1" is the DNA sequence set forth in Figure 1 of the '928 patent, and the third line labeled "PATENT928 ID#3" is the DNA sequence set forth in SEQ ID NO: 3 of the '928 patent. A box is drawn around the nucleotides that are common to all three sequences. Although the DNA sequence of Figure 1 is stated in the '928 patent to be the same as SEQ ID NO: 3, there is one base difference at position 76.

6. Exhibit 1 shows that the sequence of the cDNA insert of clone MO911 is nearly identical to SEQ ID NO: 3 of the '928 patent, and demonstrates that the cDNA insert of MO911 would specifically hybridize to SEQ ID NO: 3 under appropriate hybridization conditions.

7. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 10 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent application and any patent issuing thereon.

3 November 1999

Date

Dr. Patrick W. Gray

